



City of Seattle

---

Gregory J. Nickels, Mayor

**Department of Design, Construction and Land Use**

D. M. Sugimura, Director

**CITY OF SEATTLE  
ANALYSIS AND DECISION OF THE DIRECTOR OF  
THE DEPARTMENT OF DESIGN, CONSTRUCTION AND LAND USE**

**Application Number:** 2200724

**Applicant Name:** Bryan Campbell for Riley Pleas

**Address of Proposal:** 5020 NE 45<sup>th</sup> Street

**SUMMARY OF PROPOSED ACTION**

Master Use Permit to subdivide one parcel into seven (7) parcels of land in an Environmentally Critical Area (ECA) – Geologic Hazard Areas. Proposed parcel sizes are: A) 45,934 square feet, B) 22,541 square feet, C) 9,881 square feet, D) 11,441 square feet, E) 13,941 square feet, F) 11,969 square feet, and G) 10,741 square feet. The existing two single family structures are to remain. A portion of the principal structure (built as servant's quarters) is to extend into the required front yard on proposed Parcel B.

The following approvals are required:

**Short Subdivision** - to subdivide one existing parcel into two parcels.  
(Chapter 23.24, Seattle Municipal Code).

**SEPA Threshold Determination** (Chapter 25.05 SMC)

**Variance** - to allow structure to extend into the required front yard  
(Seattle Municipal Code 23.44.014.A).

**SEPA DETERMINATION:**      ☐ Exempt ☒ DNS ☐ MDNS ☐ EIS

☐ DNS with conditions

☐ DNS involving non-exempt grading or demolition or  
   involving another agency with jurisdiction

## **BACKGROUND DATA**

### **Site & Area Description**

The subject site is located at the northeast corner of 49<sup>th</sup> Avenue Northeast and Northeast 45<sup>th</sup> Street in the Laurelhurst neighborhood. The existing parcel area size is approximately 126,448 square located in a Single Family residential zone with a minimum lot size of 5,000 square feet (SF 5000). The site is nearly square in shape with rolling topography that slopes from its northeast corner to the southwest corner. The site is moderately vegetated with mature trees in the northeast quarter section of the site. Two residential structures occupy the development site currently. One structure (a.k.a., 5020 Northeast 45<sup>th</sup> Street) is a 2-story wood and stone principal residence with an attached carport. The second residence (a.k.a., 4520 49<sup>th</sup> Avenue Northeast) is a 3-story wood house built under a prior code that allowed servants quarters to be constructed on sites in excess of fifteen thousand (15,000) square feet. During the construction phase of the original residential structure a rockery was built that created an artificial Environmentally Critical Area - Steep Slope along the building's southwest corner. From the perimeter, the site is visually inaccessible due to a stone wall and hedge surrounding the property along the street frontages. There are two points of access to the residential structures fronting 49<sup>th</sup> Avenue Northeast and Northeast 45<sup>th</sup> Streets.

To the north of the subject site Sacred Hearts School is nestled in this Laurelhurst neighborhood. The visual impact of this educational institution is minimized by the expansive acreage where the structures are located. The rest of the area is characterized by the range of standard size lots typical for the SF5000 zone. To the west edge of the development site, the location of the residential structure (servants quarters) along the 49<sup>th</sup> Avenue Northeast frontage has created a more intimate streetscape. Across the street the relationship of the structures to the right-of-way facilitates spatial dialogue that encourages social interactions characteristic of close-knit neighborhoods. The proximity of the structures promotes greater care when driving along the roadway. To the south, Northeast 45<sup>th</sup> Streets serves as the entrance for the principle residence and is the major street carrier for vehicle traffic in this area. The houses along this block front have little spatial connection to one another, Northeast 45<sup>th</sup> Street terminates being an arterial to the west in the 4700 block.

### **Proposal**

The proposal is to subdivide one parcel of land into seven (7) parcels. Proposed parcel areas are indicated in the summary above. Proposed parcels will have direct and indirect access to both 49<sup>th</sup> Avenue Northeast and Northeast 45<sup>th</sup> Street. The existing principal single family residence will remain on proposed Parcel A, and the existing servants quarters residence shall remain on proposed Parcel B.

The existing servants quarters residence located on proposed Parcel B will create a nonconforming front yard. Therefore, the applicant has elected to request a variance to allow for a portion of the deck to encroach .8 feet (approximately 10 inches) into the front yard. The existing second story deck is 8 feet in depth and 36.3 feet long. The area of nonconformity is equivalent to 29.04 square feet. The required front yard setback for structures in Single Family

zones are 20 feet or the average of adjacent structures. The attached deck is presently 19.2 feet from the 49<sup>th</sup> Avenue Northeast frontage.

### Public Comment

A total of four comment letters were received during the initial public comment period and re-noticing, which ended on January 15, 2003. Concerns focused on preventing additional access along Northeast 45<sup>th</sup> Street to minimize potential safety hazards on slippery street conditions. Water supply and run-off water were concerns expressed by one resident because of the addition of future houses in the neighborhood. Another letter received expressed a concern for greater clarity with regards to the future location of residential structures at the development site. The last letter received questioned the need for a variance on so large a development site.

### ANALYSIS - SHORT SUBDIVISION

Based on information provided by the applicant, referral comments from the Land Use Plans Examiner, the Drainage Section, the Fire Department, Seattle Public Utilities (City Light and the Water Department), and review by the Land Use Planner, the following findings are made with respect to the above-cited criteria:

Pursuant to SMC 23.24.040, no short plat shall be approved unless all of the following facts and conditions are found to exist:

*1. Conformance to the applicable Land Use Code provisions;*

The subject property is zoned for single-family residential with a minimum lot size of 5,000 square feet. The allowed use in a single family zone is one dwelling unit per lot. Maximum lot coverage is 35%. Front setbacks are an average of the neighboring adjacent lots, or twenty (20) feet, which ever is less. The minimum side yard setback is five (5) feet. Minimum rear yard setback is twenty-five (25) feet or 20% of lot depth. Excluding proposed Parcel B the lots created by this proposed division of land will conform to all development standards of the SF 5000 zoning district. With the creation of proposed parcel boundary lines the existing (servants quarters) residential structure's deck will encroach into the required front yard by .8 feet for proposed Parcel B. The applicant has sought a variance request for this proposed nonconforming condition. This said the proposed parcels will provide adequate buildable area to meet applicable yards, lot coverage requirements, and other Land Use Code development standards.

*2. Adequacy of access for vehicles, utilities, and fire protection, as provided in Section 23.53.005;*

The proposed lots will have vehicular access to both 49<sup>th</sup> Avenue Northeast and Northeast 45<sup>th</sup> Street, consistent with the provisions of the Code. The Seattle Fire Department has no objection to the proposed short plat. All private utilities are available in this area. Seattle City Light provides electrical service to the proposed short plat. City Light has reviewed the proposal and will require an easement to provide for electrical facilities and service to the proposed lots. This short plat provides for adequate access for vehicles, utilities, and fire protection.

3. *Adequacy of drainage, water supply, and sanitary sewage disposal;*

This area is served with domestic water, sanitary sewer, and storm drain facilities by the City of Seattle. Availability of service is assured subject to standard conditions of utility extension. The Short Plat application has been reviewed by Seattle Public Utilities and a Water Availability Certificate was approved and issued on September 4, 2002. The two existing structures located upon the proposed short plat are connected by means of two shared side-sewers to adjacent properties. The existing structure on proposed Parcel A is connected to an 8-inch side-sewer serving properties to the north, addressed as 4542 - 49<sup>th</sup> Ave. NE and 4717 - 50<sup>th</sup> Ave. NE. The 8-inch side-sewer connects to an 8-inch Public Sanitary Sewer (PSS) located south of the 50<sup>th</sup> Ave. NE and NE 45<sup>th</sup> intersection. The existing structure located on proposed Parcel B is connected by means of a shared side-sewer, also serving a property addressed as 4540 - 49<sup>th</sup> Ave. NE, to an 8-inch PSS located in the 49<sup>th</sup> Ave. NE right-of-way. Either of the PSS's will be the appropriate point for storm water discharge.

New construction with discharge to the sanitary sewer will require a side-sewer permit. Drainage will be handled through the existing dedicated 12-inch public storm drain (PSD) that discharges to designated receiving water. Plan review requirements regarding storm water are made at time of building permit application. If the project includes greater than 5,000 square feet of new or replaced impervious surface, a comprehensive drainage control plan prepared in accordance with SMC 22.802.015D and 22.802.020 may be required.

4. *Whether the public use and interests are served by permitting the proposed division of land;*

One objective of the short subdivision process is to increase opportunities for new housing development in order to ensure that there will be adequate capacity for future housing needs. An equally important objective is to ensure that new development is compatible with neighborhood character. With the approval of the variance request, the proposed short subdivision will meet all the applicable Land Use Code provisions. The proposed development has adequate access for vehicles, utilities and fire protection, and has adequate drainage, water supply and sanitary sewage disposal. The public use and interest will be served with this proposal because additional opportunities for housing would be provided within the City limits as a result of this subdivision. The proposal will meet all applicable criteria for approval of a short plat upon completion of the conditions in this analysis and decision.

5. *Conformance to the applicable provisions of SMC Section 25.09.240, short subdivision and subdivisions, in environmentally critical areas;*

During the early review phase an unmapped Environmentally Critical Areas (ECA) - Steep Slope was discovered at the site adjacent to the two residential structures. The construction of rockery walls during previous project applications created a 40% Steep Slope, thus subjecting the subdivision to the provisions of the Critical Areas Ordinance. The identified 40% Steep Slope areas were located on proposed Parcels A and B. The applicant sought and was granted an ECA limited exemption (project #2301562) from Steep Slope Critical Areas. The critical area on proposed Parcel B did not meet requirements and therefore was given a full exemption.

Proposed Parcel A received a limited exemption submitting them to the general requirements standards of Geological Hazard Areas.

New construction on the parcels containing the Geological Hazard Areas will also be subject to the provisions SMC Chapter 25.09, Regulations for Environmentally Critical Areas. Grading and construction of any future structures will be reviewed during the building permitting stage and will be examined for conformance with all applicable requirements of the Land Use Code and Policies pertaining to Environmentally Critical Areas Ordinance. Therefore, this proposed short subdivision is in conformance with City of Seattle Policies and Regulations for development in Environmentally Critical Areas.

6. *Is designed to maximize the retention of existing trees;*

There are approximately thirty (30) deciduous and coniferous trees located upon the development site. Most or all of these trees can be preserved, depending upon the location any future construction, the extent of the root systems and the overall health of the trees. One large Chinese Elm centered on proposed Parcel G will likely be removed. Two Eastern Hemlocks centered on proposed Parcel F may also be removed due to future site development. Future construction will be subject to the provisions of SMC 23.44.008 which sets forth tree planting requirements on single family lots.

7. *Conformance to the provisions of Section 23.24.045, Unit lot subdivisions, when the short subdivision is for the purpose of creating separate lots of record for the construction and/or transfer of title of townhouses, cottage housing, clustered housing, or single-family housing.*

This Short subdivision is not a unit subdivision. Thus, this section is not applicable to this short plat proposal.

## **DECISION - SHORT SUBDIVISION**

The proposed short plat is **CONDITIONALLY GRANTED**.

## **SEPA DETERMINATION**

Environmental review resulting in a Threshold Determination is required pursuant to the Seattle State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05).

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated January 7, 2003. The information in the checklist, a Geotechnical Report prepared by Shannon & Wilson, Inc., dated December 5, 2002, public comment, and the experience of the lead agency with review of similar projects form the basis for this analysis and decision. Note that pursuant to SMC 25.05.908.B, the scope of the environmental review of the subject short subdivision is limited to:

1. Documenting whether the proposal is consistent with The City of Seattle Regulations for Environmentally Critical Areas, SMC Chapter 25.09; and
2. Evaluating potentially significant impacts on the environmentally critical area resources not adequately addressed in The City of Seattle Environmentally Critical Areas Policies or the requirements of SMC Chapter 25.09, Regulations for Environmentally Critical Areas, including in additional mitigation measures needed to protect the environmentally critical areas in order to achieve consistency with SEPA and other applicable environmental review laws.

The undersigned planner has analyzed the environmental checklist submitted by the project applicant; reviewed the project plans and the additional information in the file; and any comments which may have been received regarding this proposed action have been considered. As indicated in the checklist, this action may result in impacts to the environment. However, due to their temporary nature and limited effects, the impacts are not expected to be significant.

Codes and development regulations applicable to this proposed project will provide sufficient mitigation and no further conditioning or mitigation is warranted pursuant to the SEPA Overview Policy (SMC 25.05.665).

### **DECISION**

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21.030(2) (c).

### **CONDITIONS - SEPA**

None.

### **ANALYSIS - VARIANCE**

Variances from the provisions or requirements of this Land Use Code shall be authorized only when all of the following facts and conditions (stated in *italics*) are found to exist:

1. *Because of unusual conditions applicable to the subject property, including size, shape, topography, location or surroundings, which were not created by the owner or applicant,*

*the strict application of this Land Use Code would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity; and*

The variance has been requested because of unusual conditions applicable to the subject property, including the precise location of the servants quarters residence (a.k.a., 4520 49<sup>th</sup> Avenue Northeast) at the development site. The encroachment of a secondary story deck into the twenty (20) foot required front yard on proposed Parcel B is approximately nine (9) inches. At the time when the application to construct a servants quarters was completed (permit issuance date: 6-17-82), the Land Use Code (Chapter 24) permitted accessory uses that included servants quarters outright when the lot area exceeded fifteen thousand (15,000) square feet. The development site comprises an area in excess of 126,237 square feet with rolling topography that gently slopes downward from east to west. By design the street frontage along 49<sup>th</sup> Avenue Northeast was considered the front yard by the property owners prior to the construction of the servants quarters. Prior to the discovery of the nonconforming second story deck no applicable development standards would have been compromised by choosing 49<sup>th</sup> Avenue Northeast as establishing the front yard. Over 200 feet separate the principal residence from the 49<sup>th</sup> Avenue Northeast right-of-way. The Code requires orienting structures on lots that most closely meets all applicable developments standards. The deck encroachment into the required front yard along 49<sup>th</sup> Avenue Northeast has resulted in changing the location of the required front yard to a more conforming location – Northeast 45<sup>th</sup> Street. The placement of the servants quarters with attached deck on the property at the time of construction was intended to be twenty (20) feet from the street right-of-way (see building permit plan #601585). Only after a survey was conducted in preparation for the short subdivision was the nine (9) inch encroachment discovered. The creation of a separate lot for the servants quarters with direct frontage along 49<sup>th</sup> Avenue Northeast would not alter the physical front yard orientation of the existing structure. Therefore, no additional benefit would be granted by allowing the proposed lot configuration.

Property owners immediately across 49<sup>th</sup> Avenue Northeast currently have their houses much closer to the right-of-way than the requesting variance application. The average distance for the ten (10) single family structures across the 49<sup>th</sup> Avenue Northeast right-of-way is approximately 11.6 feet. With the exception of the reverse corner lot property on the block face, all of the structures located on this block front clearly establish a pattern of shallow front yards in this specific area. Strict application of the Code to the yards standards would require a minimum front yard of 20 feet along the subject site's street frontage. Given the precise location of the servants quarters on proposed Parcel B (subject site) and the immediate surroundings which were not created by the owner or applicant, the strict application of the Land Use Code would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity.

2. *The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located; and*

The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone.

The requested variance is to allow the existing attached second story deck to remain approximately 0.8 feet closer to the 49<sup>th</sup> Avenue Northeast right-of-way than the current single family zone would require. As noted, the deck was designed to meet the minimum front yard requirement of 20 feet. A front yard was identified on the building permit (#601585) plan set for the entire development site. Due to a siting miscalculation the structure was inadvertently located within the required front yard threshold. The variance is not being requested for purposes of adding to the existing residence (servants quarters) but simply to acknowledge and accept the existence of a nonconforming front yard condition.

Ten (10) out of the eleven (11) principal structures located across 49<sup>th</sup> Avenue Northeast are encroaching into the required front yard (without factoring front yard averaging). The established pattern in the vicinity has created a more intimate feel with the proximity of structures to the front boundary line along the right-of-way's west-side. The subject site appears to be compatible to the rights and privileges enjoyed by other properties in the vicinity. The existing second story deck is visually less intrusive than a solid wall portions of structures located across 49<sup>th</sup> Avenue Northeast. The visual impact of the existing condition of the servants quarters' attached second story deck would not be changed with the creation of two (2) additional lots along 49<sup>th</sup> Avenue Northeast. Therefore, the proposed parcel configuration would not increase the front yard encroachment from its existing condition and is the minimum necessary to afford relief.

3. *The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located; and*

No material detriment to the public welfare or injury to property or improvements in the zone or vicinity is likely to occur by granting the requested variances. The existing 0.8 feet second story deck encroachment has not adversely impacted any properties within the zone or vicinity to date. And it is not anticipated to cause any injury in the future. Significant screening, by virtue of a six foot stone wall and quality landscaping already mitigate any adverse visual impacts. The proposed front yard encroachment does not constitute a material detriment to the public welfare or injury to impact surrounding properties.

4. *The literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code would cause undue hardship or practical difficulties; and*

Strict application of the Code would not allow for the desired lot configuration as proposed to go forward without undermining the structural integrity of the attached second story deck. As initially designed the servants quarters was intended to be placed twenty (20) feet from the front boundary line. Due to a siting error at the time of construction, a nonconforming condition was created with regards to front yard setbacks for structures in a single family zone. As earlier noted, the encroachment is 0.8 feet into the required front yard. With the existing screening and landscaping features in the front yard, the proposed parcel configuration would not cause additional harm. No public benefit would be gained by denying the requested variance.

Several options were explored to remove the deck encroachment from the front yard. One solution would be to reconfigure proposed Parcel C to create a one (1) foot pan handle shape lot running along the frontage of the servant quarters. The net effect of this proposal would allow for a reorientation of proposed Parcel B to create a side yard between the deck (west façade) and 49<sup>th</sup> Avenue Northeast. An access easement would be granted to allow ingress/egress through a portion of the pan handle. This one foot pan handle would be allowed by code but would not be in the spirit of the platting pattern in the vicinity. A number of other permutations could result in creating an undesirable parcel configuration that would not be in the spirit of uniform development in single family zones. The literal interpretation of the applicable provisions and requirements of the Land Use Code, which denies a portion of a structure to encroach into the front yard, would cause an undue hardship and practical difficulty by creating a platting pattern that's uncharacteristic of the surrounding neighborhood.

5. *The requested variance would be consistent with the spirit and purpose of the Land Use Code and adopted Land Use Policies or Comprehensive Plan component, as applicable.*

The spirit and purpose of the Land Use Code provides for preservation and maintenance of the physical characteristics of single-family neighborhoods. It is the responsibility of the City to preserve and protect areas which are currently in predominantly single-family residential use. The subdivision of the parent lot into seven (7) parcels would not be out of character of the surrounding area. The emergence of the servants quarters on a separate parent lot totaling 22,541 square foot would not create a perceivable difference to the neighboring properties. The structure has been located in the same position since 1983 without a noticeable visual impact along the streetscape.

Seattle's Comprehensive Plan allows for the development of detached single family dwellings in single family areas compatible with the existing pattern of development and the character of each single family neighborhood. As was noted earlier, across the 49<sup>th</sup> Avenue Northeast right-of-way a pattern of more prominent nonconforming front yards exists. Furthermore, the Comprehensive Plan permits nonconforming structures to remain, but not to expand so as to increase non-conformity, except as required by applicable laws. The owner intended to maintain the 49<sup>th</sup> Avenue Northeast frontage for the parent lot. Due to a siting error of the servants quarters, a nonconformity was created which triggered a reorientation of the front yard to satisfy single family yard developments standards. The granting of the variance will not adversely affect the physical characteristics or use of the surrounding neighborhood, with the creation of separate development sites.

**DECISION - VARIANCE** (Based upon approved plans in the file)

The proposed variance to allow an existing second story deck attachment to the principal structure to extend into the required front yard is **GRANTED**.

**CONDITIONS - SHORT SUBDIVISION**

Prior to Recording

The owner(s) and/or responsible party(s) shall:

1. Have final recording documents prepared by or under the supervision of a Washington state licensed land surveyor. Each lot, parcel, or tract created by the short subdivision shall be surveyed in accordance with appropriate State statutes. The property corners set shall be identified on the plat and encroachments such as side yard easements, fences or structures shall be shown. Lot areas shall be shown on the plat. All existing structures, principal and accessory, shall be shown on the face of the plat, and their distances to the proposed property lines dimensioned.
2. Submit the final recording forms for approval and any necessary fees.
3. Add the conditions of approval to the face of the short plat, or on a separate page if needed. If the conditions are on a separate page, insert on the plat:  
  
*"For conditions of approval after recording, see Page \_\_\_ of \_\_\_." (If necessary, renumber the pages).*
4. Outline on the face of the short plat: the legal descriptions for the proposed parcels; the location of the existing utility lines on the face of the plat; all ingress and egress and utilities easements. If a utility easement is required by Seattle City Light, then the easement in its entirety (typically referred to as "Easement A") shall be shown on the face of the plat.
5. Provide an easement or covenant to allow for the placement of a visually accessible address sign on Parcel D or E for the benefit of Parcel G. The sign may be located in the ingress egress easement area to enable the owner(s) of Parcel D, E or G maintenance privileges.

After Recording and Prior to Issuance of future Building Permit

The owner(s) and/or responsible party(s) shall:

6. Attach a copy of the recorded short plat to all building permit plan sets.
7. Submit a standard drainage control plan for all initial building permits on proposed parcels.

Signature: (signature on file) Date: March 27, 2003  
Bradley Wilburn, Land Use Planner  
Department of Design, Construction and Land Use  
Land Use Services